

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:)
)
Retention by Broadcasters of) MB Docket No. 04-232
Program Recordings)

TO: The Commission

**COMMENTS OF
ADVENTIST RADIO BROADCASTERS' ASSOCIATION**

The Adventist Radio Broadcasters' Association ("ARBA") respectfully submits the following Comments in response to the Commission's *Notice of Proposed Rulemaking*, FCC 04-145 (June 21, 2004) in the above-identified proceeding.¹ ARBA opposes the Commission's proposal to require all broadcasters to record all of their programming and to retain those recordings for some set period of time.

ARBA's members are the licensees of small radio stations. These stations are operated on bare bones budgets. Many rely on volunteers to meet at least some of their staffing needs. Even the members whose stations that are legally commercial operate those stations more out of a sense of mission than profit. The additional costs that would be incurred in the course of complying with this proposal would be burdensome for such small operations, and would necessarily detract from the capabilities of these stations to serve their communities.

Research by ARBA members indicates that a very low-end computer-based audio logger system would probably cost about \$2,500 to \$3,000 to purchase and install. Maintenance and

¹ARBA is an association of 26 radio stations, both commercial and noncommercial, scattered throughout the United States, licensed to institutions and organizations associated with the Seventh-day Adventist Church.

replacement would probably cost that much again over three to five years. These estimates include only the tangible, accountable costs.

There is also the draining responsibility to maintain compliance with a new rule that would require constant attention to the details of recording and recycling the recording media after the expiration of the retention period. There is always the nagging fear that inadvertent equipment failure will result in punishable violations. The general manager of one ARBA station has managed a radio station in Canada, where similar logging requirements are in effect. He reports that the hassle-factor, in addition to the quantifiable expense, created an extra distraction for station personnel – a distraction from their primary mission of programming for their community.

Regulations, and the expense of complying with them, should be justifiable. In this case, it is difficult to justify the cost of the proposed regulation both in terms of primary costs and the distraction on staff time and energy. The Commission's stated purpose for this rule is to enhance its efforts to enforce the prohibitions on the broadcast of indecent and/or obscene programming.

Currently, there is a regulatory and legislative frenzy about broadcast indecency, fueled principally by a small handful of extraordinary and notorious incidents. The number of stations and performers involved in these activities is proportionately quite small compared to the overall number of broadcast stations that dutifully and quietly go about the business of serving their communities everyday with fare that does not shock or titillate just for the sake of putting on a show. Casting a net over the entire broadcast industry just to police a relatively few rowdies is wasteful overkill.

At the same time, it seems probable that logging of all programming would provide a significant boost to the effort to enforce the regulatory and statutory restrictions on indecency. It

might be justified where it could have a real enforcement impact – i.e., when imposed upon the stations most likely to violate the indecency rules. If the Commission feels compelled to adopt such a rule, it should pertain only to licensees who are second-time offenders. Where a station is found to have committed an indecency violation, the Commission could, as a part of the sanction for that violation, require program logging by that station, or even at all the stations licensed to the same licensee. It is noteworthy that many of the currently well-known indecency violators are group owners who seem to have violation-prone programming on more than one station. In this way, only those who have precipitated this problem in the first place would be saddled with the burden associated with the Commission's need to police this particular type of on-air conduct. No licensee would have to carry this burden until it had committed a first offense of this nature. The logging requirement could be imposed for a year or several years, for the balance of the station's license term, or for whatever other reasonable period of time seemed practical and equitable. Under such a regulatory plan, the vast majority of stations, including ARBA members, who never even come close to the line on indecency, would not be burdened to maintain copies of material that would never be needed. The specter of the future imposition of such a sanction would doubtless have almost as much deterrent effect as the logging requirement itself universally imposed.

ARBA opposes a general universal logging rule because it would be an excessive and wasteful enforcement plan. The vast majority of broadcasters in the United States are not indecency risks. The resources they would expend in complying with the proposed rule would be better used in providing constructive program services to their communities. ARBA respectfully urges the Commission not to adopt the rule as proposed in the *Notice of Proposed Rulemaking*.

Respectfully submitted,

ADVENTIST RADIO
BROADCASTERS' ASSOCIATION

By: Donald E. Martin

DONALD E. MARTIN, P.C.
P.O. Box 8433
Falls Church, Virginia 22041
703-642-2344

Its Attorney

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